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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

FISBA, L.L.C.

Plaintiff,

v.

JIM STATHIS,

Defendant.

NO.

**FISBA, LLC'S APPLICATION
FOR TEMPORARY RESTRAINING
ORDER AND MOTION TO
EXPEDITE DISCOVERY**

(Assigned to Hon.)

Pursuant to Fed. R. Civ. P. 26(c), 30(a), 33(a), 34, 36, and 65, Plaintiff FISBA, LLC ("FISBA") through undersigned counsel, hereby respectfully asks this Court to issue a temporary restraining order against the defendant and order requiring expedited discovery. A Memorandum of Points and Authorities Supports this application.

The restraining order shall require the Defendant to:

1. Immediately surrender all electronic storage devices, including but not limited to laptop computers, desktop computers, electronic tablets, electronic notebooks, cellular

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1 telephones, USB “thumb drives,” and external hard drives, to Peak Forensics in Scottsdale
2 Arizona.

3 2. Immediately disclose all emails accounts and “cloud based” storage accounts
4 to which he has access and their password and login information to Peak Forensics in
5 Scottsdale.

6 3. Preserve all evidence related to this action. Defendant shall not delete, destroy,
7 or otherwise modify evidence in any form, electronic or otherwise.

8 4. Immediately return to FISBA, and retain no copies of, confidential or trade
9 secret information belonging to FISBA, including, without limitation, FISBA’s database of
10 customer and prospect information, and information concerning past, pending, and future
11 transactions.

12 The restraining order shall enjoin the Defendant from:

13 5. Communicating in any manner with Focuslight on any subject other than his
14 employment status or any other competitor of FISBA on any subject whatsoever for a period
15 of thirty days, to be extended from the date of the signed order.

16 6. From directly or indirectly soliciting, calling-on, or inducing any person or
17 entity who is as of the date of their separation or was within twelve months immediately prior
18 to such date one of Plaintiff’s clients or prospective clients for a period of twelve months, to
19 be extended from the date of the signed order.

20 7. Directly or indirectly disclosing or using confidential or trade secret
21 information belonging to FISBA, including, without limitation, FISBA’s technical trade
22 secrets, cost and pricing information and database of customer and prospect information, and
23 information concerning past, pending and future transactions.

1 This Application is supported by the separately submitted Verified Complaint with its
 2 supporting exhibits, the Memorandum of Points and Authorities with its supporting exhibits,
 3 and further evidence and argument as may be presented at the time of the hearing on this
 4 Application.

5 **I. Request for Temporary Restraining Order.**

6 The relief FISBA requests is necessary because Defendant, in breach of his contractual
 7 and statutory obligations, and in violation of FISBA's rights, likely has and is unlawfully
 8 misappropriating, sharing, and using FISBA's confidential and trade secret information, all
 9 for the benefit of FISBA's direct competitor, Focuslight. Without the requested relief, FISBA
 10 will suffer irreparable harm because it will lose the benefit of its substantial investment and
 11 be unable effectively and fairly to compete in its industry and maintain its long-standing
 12 customer relationships. A proposed form of Order is attached hereto as Exhibit A.

13 **II. Request for Expedited Discovery.**

14 FISBA also requests that the Court order discovery to proceed on an expedited basis.
 15 To provide this Court with evidence to support the issuance of a Temporary Restraining Order
 16 and Injunction to prohibit Defendant's continued breach of his contractual, statutory and
 17 common-law obligations with FISBA, FISBA requests that, pursuant to Fed. R. Civ. P. 30(a),
 18 33(a), 34, 36, and 45, the Court enter an order permitting certain discovery to be conducted
 19 immediately in this action pursuant to the following schedule, without awaiting expiration of
 20 thirty (30) days from the date and service of the Summons and Complaint:

21 a. The parties shall respond to Requests for Production of Documents within five (5)
 22 business days after they are hand-delivered or electronically served;

23 b. The parties shall respond to Interrogatories within five (5) business days after they
 24 are hand-delivered or electronically served;
 25

1 c. The parties shall respond to Requests for Admissions within five (5) business days
2 after they are hand-delivered or electronically served;

3 d. Depositions of parties, including those requiring the production of documents at the
4 deposition, may be scheduled on or after **June 11, 2022**, upon five (5) business days' notice
5 made by hand-delivery or electronic service, for a total of five (5) depositions per side; and

6 e. Inspections, including those conducted by an electronic data expert of FISBA of
7 Defendant's devices, e-mail addresses, and workspace upon three (3) days' notice, to access,
8 inspect, and electronically copy all computer software and all data stored on any computer
9 system or computer storage medium and retrieve the proprietary information of FISBA that
10 was misappropriated by Defendant and obtain other evidence.

11 Expedited discovery is necessary because FISBA must immediately discover the true
12 extent of Defendant's improper misappropriation, use, and disclosure of its confidential and
13 trade secret information, in addition to his improper interference with FISBA's clients and
14 employees. Defendant has, over the course of the last seven months, been employed
15 simultaneously by FISBA and FISBA's direct competitor, Focuslight. During this time,
16 Defendant had broad access to FISBA's database and highly confidential trade secrets
17 including documents related to client preferences, research, and market analysis.

18 The harm to FISBA by Defendant is occurring in real time and, as a result, these
19 matters must be resolved expeditiously and will not permit the ordinary periods to run before
20 conducting discovery. Courts have not hesitated to order accelerated discovery in
21 circumstances similar to those here. *See Ellsworth Assoc., Inc. v. United States*, 917 F. Supp.
22 841, 844 (D.D.C. 1996) ("expedited discovery is particularly appropriate when a plaintiff
23 seeks injunctive relief because of the expedited nature of injunctive proceedings"); *Edudata*
24 *Corp. v. Scientific Computers, Inc.*, 599 F. Supp. 1084, 1088 (D. Minn. 1984) (ordering
25 expedited discovery where it would "better enable the court to judge the parties' interests and

1 respective chances for success on the merits” at a preliminary injunction hearing); *Fimab-*
 2 *Finanziaria Maglificio Biellese Fratelli Fila S.p.A. v. Kitchen*, 548 F. Supp. 248, 250 (S.D.
 3 Fla. 1982) (ordering deposition of defendants seven days after service of summons and
 4 complaint). A proposed Expedited Discovery Order is attached hereto as Exhibit B.

5 **III. Notice to Defendant**

6 FISBA sent a cease and desist letter to Defendant on May 3rd, 2022. Compl. ¶ . FISBA
 7 cannot provide more notice because Defendant has already shown himself to be duplicitous
 8 and refractory with respect to reasonable demands. Defendant covertly maintained
 9 employment simultaneously with FISBA and one of its primary competitors for over six
 10 months. Compl. ¶ 77. Defendant blatantly lied to FISBA about the reasons he could not
 11 attend an in-person meeting in Tucson – although Defendant stated that his wife was having
 12 medical procedure in Minneapolis, Defendant was in fact representing a FISBA competitor
 13 at an international trade show in Munich, Germany. Compl. ¶¶ 53-55. Defendant attempted
 14 to access protected FISBA information while actively serving the competitor in Munich.
 15 Compl. ¶ 57. Defendant showed himself to be unable to comply with basic and reasonable
 16 instructions when he delayed for eleven hours before depositing FISBA property with a
 17 courier and failed to send a number tracking it within an eighteen-hour window, instead
 18 requiring more than twenty hours to comply – possibly because he was copying or deleting
 19 information from that property. Compl. ¶¶ 66-72. FISBA has good cause to mistrust
 20 Defendant and believe that given notice, Defendant will share or destroy more information
 21 than he has already done.

22 **IV. Conclusion**

23 For the foregoing reasons, FISBA respectfully requests that this Court enter the
 24 attached Temporary Restraining Order and Accelerated Discovery Orders in the forms
 25 submitted to the Court this same date.

1 DATED this 13th day of May 2022.

2 **RUSING LOPEZ & LIZARDI, P.L.L.C.**

3 */s/ Paige E. Scalf*

4 Mark D. Lammers

5 Alexander P. Valentine

6 Paige E. Scalf

7 *Attorneys for Plaintiff, FISBA, L.L.C.*

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